THE HON'BLE SRI JUSTICE V.ESWARAIAH

W.P.NO.26619 OF 2005

Dt.14.12.2005

Between:

G.Manikyamma … Petitioner

And

The District Collector, Mahaboobnagar

And 3 others. … Respondents

ORDER:

Heard the learned counsel for the petitioner as well as the learned Government Pleader for Civil Supplies.

The petitioner was appointed as fair price shop dealer by proceedings dated 20.6.2005 by the Revenue Divisional Officer, Gadwal in respect of Chenugonipally Village, Gadwal Mandal, Mahabubnagar District, to supply essential commodities subject to certain terms and conditions and the petitioner complied with all the conditions and authorization was also issued. Aggrieved by the said order of the Revenue Divisional Officer, the 4th respondent filed an appeal before the Joint Collector, Mahabubnagar and the Joint Collector by order dated 19.8.2005 set aside the order of the Revenue Divisional Officer, but no relief was granted in favour of the

4th respondent. The said order dated 19.8.2005 passed by the 2nd respondent reads as under:

> "This is an appeal filed by one of the competing candidates for appointment to the post of Fair Price Shop Dealer, Chegonpally Village, Gadwal Mandal, against the order of the Revenue Divisional Officer, Gadwal No.G/180/05, dt.20.6.2005 who appointed one Smt. G.Manikyamma W/o.Anand, R/o.Chegonpally village as the dealer of the said fair price shop.
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> The appellant in her memo of appeal stated that she is qualified more than the respondent and that the respondent is working as Asst.Nurse. Perused the record of the Revenue Divisional Officer, Gadwal and heard the appellant on 8.8.2005.
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> As seen from the Lower Court record, the appellant is Intermediate pass and discontinued B.A., while the respondent is only S.S.C passed. As the respondent is stated to be working as Asst. Nurse, it is not desirable to consider her for appointment as Fair Price Shop dealer. I, therefore, allow the appeal and set aside the order of the Revenue Divisional Officer under appeal."

Aggrieved by the said order, the petitioner filed W.P.No.19089 of 2005 and the same was disposed of on 13.8.2005 on the ground that the impugned order does not indicate any basis for arriving at such a conclusion that the writ petitioner was working as Assistant Nurse and in the absence of any material such finding cannot be allowed to stand and hence the said order dated 19.8.2005 is set aside and the matter is remitted back to the 2nd respondent – Joint Collector to dispose of the appeal afresh after giving reasonable opportunity to the petitioner. Pursuant to the said order, the Joint Collector restored the appeal on record and passed the order dated 27.11.2005 which reads as follows:

> "This is a case in which the order of this Court dt.19.8.2005 in file No.CS1/605/2005 was set aside by the Hon'ble High Court in W.P.No.19089 of 2005 filed by the respondent in the said appeal case No.CS1/605/2005 and remitted back the matter for disposal in accordance with law after affording reasonable opportunities to both the parties.
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> The appeal was restored to the original No. and hearing the

counsels for both the parties. Perused the material on record. As pointed out by the Hon'ble High Court, there is no material on record to prove that the respondent was working as Assistant Nurse at a salary of Rs.500/-, except the statement of the appellant. In the absence of material proof on this point no conclusion can be arrived at. The case is therefore remanded to the Revenue Divisional Officer, Gadwal with a direction to settle the dispute after affording a reasonable opportunity to both the parties, in accordance with law. With this direction, the appeal is partly allowed."

Questioning the said order dated 27.11.2005, this writ petition has been filed contending that in the absence of recording of any finding whether the petitioner worked at any time as Assistant Nurse, remanding the matter to the Revenue Divisional Officer is illegal and unwarranted and the 4th respondent also failed to prove her contention that the petitioner has worked as Assistant Nurse.

Having regard to the facts and circumstances of the case, I am of the opinion that if there is any ambiguity in the evidence, fresh enquiry is required to be made and then only the order has to be set aside and the matter is to be remitted back. In the instant case, the order of the appointing authority has not been set aside. Simply it has been remanded to the Revenue Divisional Officer to settle the dispute. When there is no dispute at all and the petitioner asserts that she never worked as Assistant Nurse and in the absence of the any evidence that has been pleaded and proved by the 4th respondent, remitting the matter again to the Revenue Divisional Officer is illegal and without jurisdiction. Accordingly, the impugned order dated 27.11.2005 passed by the 2nd respondent is set aside.

The writ petition is allowed accordingly. No costs.

(V.ESWARAIAH, J.)

14.12.2005

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